

EDMUND G. BROWN JR., Attorney General
of the State of California
PAUL C. AMENT
Supervising Deputy Attorney General
E. A. JONES III, State Bar No. 71375
Deputy Attorney General
ELAINE GYURKO
Senior Legal Analyst
California Department of Justice
300 South Spring Street, Suite 1702
Los Angeles, California 90013
Telephone: (213) 897-4944
Facsimile: (213) 897-9395

Attorneys for Complainant

**BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Petition to Revoke Probation
Against:

Case No. D1 2004 10

**PETITION TO REVOKE
PROBATION**

STEVEN ANTHONY SMITH
5770 W. Centinela Avenue, Apt. #202
Los Angeles, California 90045

Respiratory Care Practitioner License No. 24213

Respondent.

Complainant alleges:

PARTIES

1. Stephanie Nunez (Complainant) brings this Petition to Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care Board of California, Department of Consumer Affairs (Board).

2. On or about March 23, 2005, the Board issued Respiratory Care Practitioner License No. 24213 to Steven Anthony Smith (Respondent). This license was in effect at all times relevant to the charges brought herein and will expire on November 30, 2009, unless renewed.

3. In a disciplinary action entitled "*In the Matter of the Statement of Issues*

1 *Against Steven Anthony Smith,”* Case No. S-345, the Board issued a decision effective March 23,
2 2005, in which Respondent was issued a probationary license for a period of three (3) years with
3 certain terms and conditions. A copy of that decision is attached as Exhibit A and is incorporated
4 herein by reference.

5 JURISDICTION

6 4. This Petition to Revoke Probation is brought before the Board under the
7 authority of the following laws. All section references are to the Business and Professions Code
8 (Code) unless otherwise indicated.

9 5. Section 3710 of the Code states: “The Respiratory Care Board of
10 California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter
11 8.3, the Respiratory Care Practice Act].”

12 6. Section 3718 of the Code states: “The board shall issue, deny, suspend,
13 and revoke licenses to practice respiratory care as provided in this chapter.”

14 7. Section 3754 of the Code states: “The board may deny an application for,
15 or issue with terms and conditions, or suspend or revoke, or impose probationary conditions
16 upon, a license in any decision made after a hearing, as provided in Section 3753.”

17 COST RECOVERY

18 8. Section 3753.5, subdivision (a) of the Code states:
19 “In any order issued in resolution of a disciplinary proceeding before the board,
20 the board or the administrative law judge may direct any practitioner or applicant found to have
21 committed a violation or violations of law to pay to the board a sum not to exceed the costs of the
22 investigation and prosecution of the case.”

23 9. Section 3753.7 of the Code states:
24 “For purposes of the Respiratory Care Practice Act, costs of prosecution shall
25 include attorney general or other prosecuting attorney fees, expert witness fees, and other
26 administrative, filing, and service fees.”

27 10. Section 3753.1, subdivision (a) of the Code states:
28 “An administrative disciplinary decision imposing terms of probation may

1 include, among other things, a requirement that the licensee-probationer pay the monetary costs
2 associated with monitoring the probation.”

3 FIRST CAUSE TO REVOKE PROBATION

4 (Biological Fluid Testing)

5 11. At all times after the effective date of Respondent’s probation, Condition 2
6 stated:

7 Respondent, at his expense, shall participate in random testing, including, but not
8 limited to, biological fluid testing (i.e., urine, blood, saliva), breathalyzer, hair follicle
9 testing, or a drug screening program approved by the Board. Test costs range from
10 \$21.00 to \$200.00 each. The length of time shall be for the entire probation period. The
11 frequency and location of testing will be determined by the Board.

12 At all times, Respondent shall fully cooperate with the Board or any of its
13 representatives, and shall, when directed, appear for testing as requested, and submit to
14 such tests and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs
15 or other controlled substances.

16 If Respondent is unable to provide a specimen in a reasonable amount of time
17 from the request, while at the work site, Respondent understands that any Board
18 representative may request from the supervisor, manager or director on duty to observe
19 Respondent in a manner that does not interrupt or jeopardize patient care in any manner,
20 until such time Respondent provides a specimen acceptable to the Board.

21 Failure to submit to testing or appear as requested by any Board representative for
22 testing, as directed, shall constitute a violation of probation, and shall result in the filing
23 of an accusation and/or a petition to revoke probation against Respondent’s respiratory
24 care practitioner license.

25 12. Respondent’s probation is subject to revocation because he failed to
26 comply with Probation Condition 2, referenced above. The facts and circumstances regarding
27 this violation are as follows:

28 A. As part of Respondent’s random drug testing program, he was required to

1 call the automated telephone system at Compass Vision, Inc. (CVI) on a daily basis to
2 determine if he needed to provide a specimen for testing and analysis. Respondent failed
3 to telephone CVI on the following dates: November 6 and 25, 2007; December 13, 15,
4 18, 25 and 28, 2007; January 13, 14, 16, and 26, 2008; and February 2, 6, 24 and 26,
5 2008.

6 B. Respondent was scheduled to provide a specimen for testing and analysis
7 on the following dates: January 5, 2006; March 20, 2006; December 27 and 29, 2006;
8 January 2 and 9, 2007; February 2 and 19, 2007; March 10, 2007; November 30, 2007;
9 December 17, 2007; and January 2, 2008. Respondent failed to provide a specimen as
10 directed.

11 SECOND CAUSE TO REVOKE PROBATION

12 (Abstain from Use of Drugs and Alcohol)

13 13. At all times after the effective date of Respondent's probation, Condition 3
14 stated:

15 Respondent shall completely abstain from the possession or use of alcohol,
16 controlled substances, dangerous drugs, and any and all other mood altering drugs,
17 substances and their associated paraphernalia, except when the drugs are lawfully
18 prescribed by a licensed practitioner as part of a documented medical treatment.

19 Respondent shall execute a release authorizing the release of pharmacy and
20 prescribing records as well as physical and mental health records. Respondent shall also
21 provide information of treating physicians, counselors or any other treating professionals
22 as requested by the Board.

23 Respondent shall ensure that he is not in the presence of or in the same physical
24 location as individuals who are using illegal substances, even if Respondent is not
25 personally ingesting the drug(s).

26 Any positive result that registers over the established laboratory cutoff level shall
27 constitute a violation of probation and shall result in the filing of an accusation and/or a
28 petition to revoke probation against Respondent's respiratory care practitioner license.

Respondent also understands and agrees that any positive result that registers over the established laboratory cutoff level shall be reported to each of Respondent's employers.

14. Respondent's probation is subject to revocation because he failed to comply with Probation Condition 3, referenced above. The facts and circumstances regarding this violation are as follows:

A. On February 17, 2006, Respondent appeared at a collection site to provide a urine specimen for testing and analysis in accordance with his probation monitoring program. The laboratory report from CVI indicated he tested positive for Ethyl Glucuronide at a level of 520 nanograms/milligrams, indicating consumption of alcohol.

B. On January 24, 2008, Respondent appeared at a collection site to provide a urine specimen for testing and analysis in accordance with his probation monitoring program. The laboratory report from CVI indicated he tested positive for Ethyl Glucuronide at a level of 4000 nanograms/milligrams, indicating consumption of alcohol.

C. On February 11, 2008, Respondent signed a Drug Questionnaire under penalty of perjury. He answered “Yes” to question number 5, “In the last 3 weeks, have you consumed alcohol?” He admitted that he had consumed one Mai Tai on January 24, 2008.

THIRD CAUSE TO REVOKE PROBATION

(Probation Monitoring Costs)

15. At all times after the effective date of Respondent's probation, Condition 8 stated:

All costs incurred for probation monitoring during the entire probation shall be paid by the Respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the Respiratory Care Board and must be received by the date(s) specified. (Periods of tolling will not toll the probation

1 monitoring costs incurred.)

2 If Respondent is unable to submit costs for any month, he shall be required instead
3 to submit an explanation of why he is unable to submit the costs, and the date(s) he will
4 be able to submit the costs including payment amount(s). Supporting documentation and
5 evidence of why the Respondent is unable to make such payment(s) must accompany this
6 submission.

7 Respondent understands that failure to submit costs timely is a violation of
8 probation, and submission of evidence demonstrating financial hardship does not
9 preclude the Board from pursuing further disciplinary action. However, Respondent
10 understands providing evidence and supporting documentation of financial hardship may
11 delay further disciplinary action.

12 In addition to any other disciplinary action taken by the Board, an unrestricted
13 license will not be issued at the end of the probationary period and the respiratory care
14 practitioner license will not be renewed, until such time all probation monitoring costs
15 have been paid.

16 The filing of bankruptcy by Respondent shall not relieve the Respondent of his
17 responsibility to reimburse the Board for costs incurred.

18 16. Respondent's probation is subject to revocation because he failed to
19 comply with Probation Condition 8, referenced above. The facts and circumstances regarding
20 this violation are as follows:

21 Respondent is delinquent in his probation monitoring costs in the amount of
22 \$3,011.75.

23 PRAYER

24 WHEREFORE, Complainant requests that a hearing be held on the matters herein
25 alleged, and that following the hearing, the Respiratory Care Board issue a decision:

26 1. Revoking the probation that was granted by the Respiratory Care Board of
27 California in Case No. S-345;

28 2. Revoking or suspending Respiratory Care Practitioner License No. 24213

1 issued to Steven Anthony Smith;

2 3. Ordering Steven Anthony Smith to pay the Respiratory Care Board the
3 costs of the investigation and enforcement of this case, and if probation is continued or extended,
4 the costs of probation monitoring; and

5 4. Taking such other and further action as deemed necessary and proper.

6 DATED: March 19, 2008

7
8
9 Original signed by Liane Zimmerman for:
10 STEPHANIE NUNEZ
11 Executive Officer
12 Respiratory Care Board of California
13 Department of Consumer Affairs
14 State of California
15 Complainant
16
17
18
19
20
21
22
23
24
25
26
27
28